

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

FC 2011-006739

02/15/2012

HONORABLE JANICE CRAWFORD

CLERK OF THE COURT
J. Escarcega
Deputy

IN RE THE MARRIAGE OF
ROBERT WICHNER

MELISSA KLEMSKI BOWER

AND

CYNTHIA WICHNER

CYNTHIA WICHNER
19426 N CENTRAL AVE
PHOENIX AZ 85024

MINUTE ENTRY

Courtroom 911 – East Court Building

9:40 a.m. This is the time set for a Resolution Management Conference. Petitioner is present telephonically and represented by counsel, Aaron T. Blase, who appears for Melissa Kleminski Bower.

A record of the proceedings is made by audio and/or videotape in lieu of a court reporter.

Discussion is held.

IT IS ORDERED:

1. A trial will take place as follows:

a. **Date** – April 23, 2012

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b. **Time** – 9:00 a.m.

c. **Location** – Maricopa County Superior Court
East Court Building
101 W. Jefferson St.
Courtroom 911
Phoenix, Arizona 85003

2. YOU AND, IF APPLICABLE, YOUR ATTORNEY SHOULD **READ EVERYTHING THAT FOLLOWS WITH GREAT CARE**. FAILURE TO DO SO MAY LIMIT WHAT YOU WILL BE ALLOWED TO SAY AND WHAT EVIDENCE YOU WILL BE ALLOWED TO PRESENT AT THE TRIAL.

3. **Time Set Aside for You** – The Court has set aside **three hours** for this trial. You will be allowed one-half of that time to present your case. Ariz. R. Fam. L. P. 77(C)(5). This includes your own testimony; testimony of other witnesses from whom you would like the Court to hear; cross examination of the other party and the other party's witnesses; objections to any of the other party's evidence; and any opening statement, closing argument, or other argument that you choose to make.

4. **Findings of Fact and Conclusions of Law** – You may request findings of fact and conclusions of law regarding the following issues, if they are contested: child custody, relocation requests, spousal maintenance, community property, community debt, and child support. To request findings of fact and conclusions of law, you must file a written request with the court before the trial or the evidentiary hearing. If you do so, the court will include findings of fact and conclusions of law in its final, written decision.

If either party asks the Court to make findings of fact and conclusions of law regarding any issue, then each party must file written proposed findings of fact and conclusions of law regarding all such issues. The proposed findings also must be submitted in an electronic form (preferably Microsoft Word) that can be edited. **The proposed findings and conclusions must be submitted as an attachment to the Pretrial Memorandum** (the Prehearing Memorandum is discussed below). **If you fail to do this, you will be deemed to have waived a request for such findings and conclusions.**

4. **Additional Time** – If you think additional time needs to be set aside, you must request it by filing a motion not later than 30 days before the trial date stated above. That request must include a reasonable explanation for the request **ALONG WITH** a list of each witness that you intend to have testify, a statement that describes what you expect each such witness to say,

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and an estimate of the amount of time you think will be necessary for that witness to testify. Because of the large number of cases assigned to this Division, it is very difficult to reschedule trials. Therefore, requests for additional time will be granted only in extraordinary circumstances.

5. Postponements – Requests to postpone (or continue) the trial are usually denied. If you think that a postponement is necessary, the request must be made by motion as far in advance of the trial as possible, and that motion must present very compelling reasons for the request.

The party who files such a motion shall disclose the existence of all previous trial postponements (or continuances) that have been granted by including a statement in the caption, immediately below the title of such motion that identifies it as the first, second, third, etc. requested extension, e.g., "MOTION TO CONTINUE TRIAL DATE (Second Request)".

Generally, merely stating in the motion that the other party and you are trying to reach a settlement, without any specifics about the subjects of disagreement and what has so far prevented agreements from being reached, will not be sufficient. Before filing such a motion, you should make a reasonable attempt to ask the other party (or that party's attorney, if there is one) whether that party agrees or disagrees about a postponement, and then state that party's position in the motion. Even if the other party does agree, the motion must still provide sufficient reasons for the request. Given the number of other cases assigned to this Division, it should be remembered that, if there are compelling reasons for postponing the trial, it likely cannot be rescheduled any sooner than 4-5 months after the day that the motion is submitted.

VERY IMPORTANT
What You Need to Do Before the Trial

1. Disclosure -- You must tell the other party, in writing, everything that you will ask the Court to consider when deciding your case. Disclosure includes the following:

a. **Witnesses** – You must prepare a list of the witnesses whom you will or may ask to testify on your behalf. The list must include the name, address (if known), and telephone number (if known) of each witness and a reasonable description about what you expect that witness to say. The list must be sent or delivered to the other party and to the Court at least 30 days before the trial date listed above. At the end of the list, you must certify the manner in which you provided the list to the other party. The two most common methods are mail or by having someone personally deliver them to the other party.

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b. **Exhibits** – Anything in writing or that can be copied onto paper (such as e-mails, text messages, and photographs) that you will want the Court to consider requires you to do the following: (i) prepare a list of each such item, (ii) copy each such item, and (iii) provide a copy of the list and a copy of each item on the list to the other party at least 15 days before the trial date listed above. At the end of the list, you must certify the manner in which you provided the list and copies of everything listed to the other party.

In addition, a complete set of those exhibits must be delivered to the Clerk of this Division at least 7 days before the hearing date listed above so that the Clerk can assign the “official” numbers to those exhibits. If you do not do so, then each of your exhibits will have to be assigned its official number as the hearing progresses. That will take time, and the time spent doing that will come out of the time allocated to you: should that happen, then you will have less time to present your case than you will have if you submit your exhibits to the Clerk by the 7-day deadline. In addition, the exhibits must be separated from one another with a colored sheet of paper on which the exhibit number is written. If you do not do this, the exhibits will be returned to you.

Finally, you must bring an additional, complete set of your exhibits to the hearing for the judge. Again, separate each exhibit with a colored divider page with the “official” exhibit number written on the page. If you do not provide the judge with a set of your exhibits, you will likely have less time to present your evidence than you planned because the judge will have to take time to look at the exhibit after your witness has testified about it instead of being able to follow along while the witness testifies.

c. **Affidavit of Financial Information** – At least 15 days before the trial date listed above, you must file with the Court an Affidavit of Financial Information. In addition, at the same time, you must provide a copy of that Affidavit **and all attachments** specified in the Affidavit to the other party. The form to be used can be found on the Internet at this Court’s website.

d. **Expert Witnesses** – Expert witnesses are generally people with specialized training, education, or expertise, such as psychologists or accountants. If you intend to have an expert witness testify on your behalf, the following procedure will apply:

i. You must provide the name of the expert witness and the subject matter of his/her testimony to the other party not later than 7 calendar days after you decide to have that expert testify on your behalf, and in no event, not less than 45 days before the scheduled trial date.

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ii. At the trial, direct examination of the expert witness will not be allowed. Instead, you must submit the expert's direct examination either in the form of a declaration or a report. That declaration or report must be provided to the other party and to the Court at least 30 days before the trial date listed above.

iii. Failure to comply with these disclosure requirements regarding experts will almost certainly mean that such expert testimony will not be allowed.

iv. These requirements regarding expert witnesses will not apply to court-appointed parenting coordinators, court-appointed advisers, and other court-appointees who submit written reports to the Court and the parties in advance of the trial. You will be permitted to have that person testify as you would any other witness, so long as you have included that person on your list of witnesses. Whether or not you ask that person to testify on your behalf, if you want the Court to consider any report that person wrote, you must include it on your list of exhibits.

2. **Discovery** – All discovery (for example, interrogatories, requests for documents, and depositions) must be completed at least 20 days before the trial date listed above.

a. For interrogatories and document requests, “completed” means that you must send them to the other party so that the responses will be due at least 20 days before the trial date. Generally, that will mean that the deadline for you to send interrogatories and document requests to the other party will be 65 days before the trial date.

b. Any deposition transcripts, interrogatory answers, or written responses to document requests that you want the Court to consider should be listed on your list of exhibits.

c. You must comply with any reasonable request from the other party for written consents or releases that will allow the other party to obtain records and other documents that the Court may need to consider, including records from a bank or other financial institution where you have an account, a company including present and past employers, or health care providers including medical professionals who have treated you.

i. A party making such a request must have a reasonable basis for doing so and may not use this requirement as an opportunity to conduct a fishing expedition in the hope that something useful may turn up.

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ii. At the time such as a request is made, the party making the request must also provide written assurance that describes the steps that will be taken so that the requested records or documents are kept confidential.

iii. If a party acts unreasonably, either when making such a request or when responding to it, in a way that forces the other party to incur any expense that could have been avoided, the party who acts unreasonably may be required to reimburse that expense.

3. **Pretrial Memorandum (Mandatory)** – At least 7 days before the trial date listed above, you must provide the Court with a Pretrial Memorandum. You must also provide a copy to the opposing party unless that party has an attorney, and in that event, the copy must be provided to that attorney. That Memorandum should specify in detail what you want the Court to do and explain why that is reasonable. At a minimum, the Memorandum should include at least the following sections:

a. A **summary** of the issues for which you want rulings from the Court (such as custody, child support, parenting time or visitation, division of property, division of debts, spousal maintenance, and so forth).

b. If there is a disagreement about **custody** (for example, one party wants sole custody and the other wants joint custody), your memorandum should discuss each factor listed in A.R.S. § 25-403(A) that you think is relevant and why you think that factor supports your position. A.R.S. § 25-403(A) can be found on the Internet or in the reference section of local public libraries.

c. If there is a disagreement about **spousal maintenance**, your memorandum should discuss each factor listed in A.R.S. § 25-319 that you think is relevant and why you think that factor supports your position. A.R.S. § 25-319 can be found on the Internet or in the reference section of local public libraries.

Note: This requirement applies even if you think that no spousal maintenance should be allowed. In that event, your memorandum must explain why the factors listed in A.R.S. § 25-319 that are relevant to your case support the conclusion that spousal maintenance should not be awarded.

d. If there is a disagreement about **parenting time**, your memorandum should include the specific, detailed parenting plan that you want the Court to adopt. Forms for parenting time can be found on the Internet, and the completion and attachment of such a form to your memorandum will be sufficient.

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- e. Your memorandum should include your final list of witnesses.
- f. Your memorandum should include your final list of exhibits.

CRITICAL NOTE TO PARTIES: If there is any issue about which you want the Court to make a ruling, and you fail to identify it in your Pretrial Memorandum, or if you fail to submit a Pretrial Memorandum altogether, unless you have a very compelling excuse for that failure, you may be deemed to have waived that issue. In short, **the submission of a comprehensive Pretrial Memorandum is a requirement** and not a suggestion.

NOTE TO ATTORNEYS: This Division is eliminating the practice of asking for a Joint Pretrial Statement. In its place will be the separate Pretrial Memorandum described above. If you want the Court to give careful, reasoned thought to the positions that you will be urging on your client's behalf, it is important that you meet the 7-day deadline. Submitting the memorandum on the day of trial will in most cases be the equivalent of not submitting any memorandum at all because there will not be sufficient time to read and think about what is said in the memorandum. That said, if both sides are represented by attorneys who think that it would be beneficial to work collaboratively on the submission of a Joint Pretrial Statement, that will be acceptable so long as that Joint Pretrial Statement is timely submitted and it complies substantively with the requirements listed above.

4. **Attorney's Fees** – Arizona law does not allow an award of attorney's fees to any party who represents himself or herself, even when that party is an attorney. *See e.g., Hunt Inv. Co. v. Eliot*, 154 Ariz. 357, 362, 742 P.2d 858, 863 (App. 1987). If an attorney wishes to request an award of fees on behalf of a client, the request should be noted in a single sentence in the Pretrial Memorandum along with citations to the legal authority on which the request is based. No *China Doll* affidavit should be submitted unless and until the Court requests it.

5. **Parental Education Program** – If you and the other party have a natural or adopted minor child in common who is under the age of 18, then, if you have not done so already, at least 7 days before the trial date listed above, you must file with the Court proof that you have complied with the Parental Education Program requirements of A.R.S. § 25-351 and following.

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**What Happens When
A Party Does Not Comply with These Requirements**

If you do not appear for the trial on the date and at the time stated above, or if you do not comply with one or more of the requirements listed above, and you cannot provide a reasonable excuse for doing so, the Court may penalize you in one or more ways. Penalties may include a refusal to allow you to present certain evidence, a financial penalty, or a trial that proceeds as if you have consented to what the other party has requested (i.e., proceeding by default). See Ariz. Rs. Fam. L. P. 71(A); Maricopa Cty. Sup. Ct. R. 6.2(e).

**Finally,
A Few Suggestions**

In addition to complying with the requirements listed above, the presentation of your case probably will be much more effective if you do the following (but, these are only suggestions):

1. If any of your exhibits contain more than three pages, and those pages do not have page numbers on them, then without blocking out any relevant information, write in page numbers before you make the copies that you deliver to the Clerk and send to the other party. If possible, place those page numbers at or near the bottom right corner or the top right corner of each page. That way, during the trial, it will become much easier for witnesses, the other party, and the Judge to find a specific page within a multi-page exhibit.
2. For any multi-page exhibit, consider preparing a summary exhibit that goes along with it. See Ariz. R. Evid. 1006. A summary exhibit is just that: it summarizes the key information that you want the Court to understand that is scattered throughout the multi-page exhibit. For example, a summary exhibit may be useful in helping to explain a series of financial records, such as various debts or a series of deposits and withdrawals. A summary exhibit could be a timeline that makes it easier to understand a series of e-mails between the parties. A summary exhibit also could be a calendar that shows on what days or how often something did or did not happen. The possibilities are almost limitless.
3. Remember that any decision the Court must make will be based on the law and the facts proven by the evidence and not on the basis of which party is better at name-calling.

Summary of Important Deadlines

Last day to identify **witnesses** – 30 days before the trial date.

Last day to identify and provide copies of **exhibits** – 15 days before the trial date.

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Last day to deliver exhibits to the Court's Clerk – 7 days before the trial date.

Last day to file **Affidavit of Financial Information** (and provide copy to the other party) – 15 days before the trial date.

Last day to provide copy of **expert witness** reports or declarations to the Court and the other party – 45 days before the trial date.

Last day to **complete discovery** – 20 days before the trial date.

Last day to file **Pretrial Memorandum** (and provide copy to the other party) – 7 days before the trial date.

Last day to file proof of completion of **Parental Education Program** – 7 days before the trial date.

Last day to **provide the judge** with a separate set of exhibits – At the trial.

9:50 a.m. Matter concludes.

All parties representing themselves must keep the Court updated with address changes. A form may be downloaded at: <http://www.superiorcourt.maricopa.gov/SuperiorCourt/Self-ServiceCenter>.